

## Social Security Administration

## § 404.1007

States, nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States, or corporations organized under the laws of the United States or of any State.

(4) *Citizen of the United States* includes a citizen of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands.

(5) *Foreign affiliate* refers to a foreign affiliate as defined in section 3121(1)(6) of the Code.

(6) *On and in connection with* refers to the performance of work on a vessel or aircraft which concerns the vessel or aircraft. Examples of this kind of work are the services performed on a vessel by employees as officers or crew members, or as employees of concessionaires, of the vessel.

(7) *On or in connection with* refers to work performed on the vessel or aircraft and to work which concerns the vessel or aircraft but not actually performed on it. For example, shore services in connection with repairing, loading, unloading, or provisioning a vessel performed by employees as officers or crew members, or as employees of concessionaires, of the vessel are included, since this work concerns the vessel though not performed on it.

(8) *State* refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *United States* when used in a geographical sense means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[45 FR 20075, Mar. 27, 1980, as amended at 50 FR 36573, Sept. 9, 1985; 55 FR 51687, Dec. 17, 1990; 61 FR 38365, July 24, 1996; 69 FR 51555, Aug. 20, 2004]

### § 404.1005 Who is an employee.

You must be an employee for your work to be covered as employment for social security purposes. You are an employee if you are—

(a) A corporation officer as described in § 404.1006;

(b) A common-law employee as described in § 404.1007 (unless you are, after December 31, 1982, a qualified real estate agent or direct seller as described in § 404.1069); or

(c) An agent-driver or commission-driver, a full-time life insurance salesman, a home worker, or a traveling or city salesman as described in § 404.1008.

[45 FR 20075, Mar. 27, 1980, as amended at 48 FR 40515, Sept. 8, 1983]

### § 404.1006 Corporation officer.

If you are an officer of a corporation, you are an employee of the corporation if you are paid or you are entitled to be paid for holding office or performing services. However, if you are a director of a corporation, we consider you to be self-employed when you work as a director.

### § 404.1007 Common-law employee.

(a) *General.* The common-law rules on employer-employee status are the basic test for determining whether you and the person or firm you work for have the relationship of employee and employer. Even though you are considered self-employed under the common-law rules, you may still be an employee for social security purposes under § 404.1006 (relating to corporation officers) or § 404.1008 (relating to workers in four specific jobs). In general, you are a common-law employee if the person you work for may tell you what to do and how, when, and where to do it. The person or firm you work for does not have to give these orders, but needs only the right to do so. Whether or not you are a common-law employee is not always clear. Several aspects of your job arrangement are considered in determining whether you are an employee or are self-employed under the common-law rules.

(b) *Factors that show employee status.* Some aspects of a job arrangement that may show you are an employee are as follows:

(1) The person you work for may fire you.

(2) The person you work for furnishes you with tools or equipment and a place to work.

(3) You receive training from the person you work for or are required to follow that person's instructions.

(4) You must do the work yourself.

(5) You do not hire, supervise, or pay assistants (unless you are employed as a foreman, manager, or supervisor).

(6) The person you work for sets your hours of work, requires you to work full-time, or restricts you from doing work for others.

(7) The person you work for pays your business or traveling expenses.

(8) You are paid by the hour, week or month.

(c) *Factors that show self-employed status.* Some aspects of a job arrangement or business venture that may show you are self-employed are as follows:

(1) You make a profit or suffer a loss.

(2) You are hired to complete a certain job and if you quit before the job is completed you may be liable for damages.

(3) You work for a number of persons or firms at the same time.

(4) You advertise to the general public that you are available to perform services.

(5) You pay your own expenses and have your own equipment and work place.

(d) *Questions about your status.* If there is a question about whether you are working as an employee or are self-employed, we or the Internal Revenue Service will make a determination after examining all of the facts of your case.

**§ 404.1008 Agent-driver or commission-driver, full-time life insurance salesman, home worker, or traveling or city salesman.**

(a) *General.* In addition to common-law employees and corporation officers, we consider workers in the four types of jobs described in paragraphs (b) through (e) of this section to be employees if their services are performed under the following conditions:

(1) Under the work arrangement the worker is expected to do substantially all of the work personally.

(2) The worker must not have a substantial investment in the facilities used to do the work. Facilities include such things as a place to work, storage space, equipment, machinery and office furniture. However, facilities do not in-

clude tools, equipment or clothing of the kind usually provided by employees nor transportation such as a car or truck.

(3) The work must be performed as part of a continuing work relationship between the worker and the person for whom the work is done. The work performed must not be a single transaction. Part-time and regular seasonal work may be performed as part of a continuing work relationship.

(b) *Agent-driver or commission-driver.* This is a driver hired by another person to distribute meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services. We consider you an agent-driver or commission-driver if you are paid a commission based on your sales or the difference between the price you charge your customers and the amount you pay for the goods or services. It makes no difference whether you drive your own truck or the company's truck or whether you solicit the customers you serve.

(c) *Full-time life insurance salesman.* A full-time life insurance salesman's main activity is selling life insurance or annuity contracts, or both, mostly for one life insurance company. If you are a full-time life insurance salesman, you are probably provided office space, stenographic help, telephone, forms, rate books and advertising materials by the company or general agent, without cost to you.

(d) *Home worker.* A home worker is a person who works away from the place of business of the person he or she works for, usually at home. If you are a home worker and you work according to the instructions of the person you work for, on material or goods furnished by that person, and are required to return the finished product to that person (or another person whom he or she designates), you are an employee.

(e) *Traveling or city salesman.* The main activity of a traveling or city salesman is taking orders for merchandise for another person or firm. The salesman gets orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other firms whose main business is furnishing food or lodging or both. The salesman sells